

MV 95-12

Tax Type: MOTOR VEHICLE USE TAX

Issue: Rolling Stock (Purchase/Sale Claimed To Be Exempt)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS)
)
v.) No.
) IBT
) NTL
XXXXX,)
)
Taxpayer)

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, for the taxpayer; Mr. Marc Muchin, Special Assistant Attorney General, for the Department of Revenue.

SYNOPSIS: This cause came to be heard on the timely protest filed in response to Notices of Tax Liability XXXXX and XXXXX issued on November 29, 1994 by the Illinois Department of Revenue against the above named taxpayer. At issue is the question of whether two "luxury" automobiles purchased by TAXPAYER and used by such business are entitled to exemption from Illinois Use Tax under the "rolling stock" provision of that Act. (35 ILCS 105/3-55(b) and 105/3-60) Upon consideration of the evidence presented, it is recommended that the matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The Department's prima facie case as to the taxes and penalties deemed due was established through the admission into evidence, without objection, of the Correction of Returns and Notices of Tax Liability relating thereto. (Dept. Ex. Nos. 1-4)

2. TAXPAYER is a trucking company, organized and operated as a for-

profit corporation under the laws of the State of Illinois. (Tr. p. 11)
It is authorized by the Interstate Commerce Commission, through permit No. XXXXX, issued May 8, 1987, and effective as of the date of this hearing, to operate as an interstate carrier. (Taxpayer Ex. No. 1)

3. Up to 95% of the business of TAXPAYER, is interstate shipping. (Tr. pp. 42, 54)

4. Taxpayer, in February and June of 1992, purchased two passenger vehicles, viz. a 1992 Chevrolet Camaro two-door white coupe and a 1992 Lincoln four-door sedan. Both vehicles were titled to TAXPAYER. Both vehicles were registered as "exempt" under the rolling stock provision on the Department's 556 transaction returns. (Tr. pp. 17-18)

5. Both vehicles are used by the taxpayer in the transportation of various types of metal samples for customers in a six-state area surrounding Illinois. (Tr. p. 18)

6. Testimony shows that use of the automobiles in the business of TAXPAYER was faster and more economical for purposes of transporting metal samples than were trucks. (Tr. p. 35)

7. None of the items transported were the property of TAXPAYER, and taxpayer at no time took title to any shipments either before or after transport.

8. Taxpayer's representative documentation, i.e., shipping orders and freight bills, corroborate that both the Camaro and Lincoln were used to transport various metallics and metal samples to and from locations outside the state of Illinois. (Taxpayer's Group Ex. Nos. 2 and 3)

9. Shipping orders and freight bills indicate that the weights of the items transported never exceeded a maximum of 486 pounds. (Taxpayer's Group Ex. Nos. 2 and 3)

10. Although no documentary proof of invoices or payments for such transport was made of record, the taxpayer, through its president XXXXX,

testified he charges for every trip made. (Tr. p. 26) I find a reasonable inference can be drawn from the evidence present that the transportation involved in this matter was not done without remuneration.

11. The vehicles in question have accumulated a total of approximately 57,000 miles in interstate shipments since their purchase in 1992. (Tr. p. 55)

12. Neither the Chevrolet Camaro nor the Lincoln which are the subject of this hearing are or were used for personal reasons at any time. (Tr. p. 33)

13. Both vehicles, when not in use are housed in a garage at the company warehouse. (Tr. p. 50)

14. XXXXX, taxpayer's president, owns 3 other automobiles, a Chevrolet Lumina, a Plymouth Sundance and a 1983 Oldsmobile. These vehicles, which are all titled in his own name and upon which all requisite use taxes were paid, are used for personal driving trips. (Tr. p. 34)

15. Aside from their direct use, the vehicles are often utilized for emergency purposes to complete interstate shipments when trucks have broken down en route. (Tr. p. 54)

CONCLUSIONS OF LAW: The Illinois Use Tax Act, 35 ILCS 105/3, pursuant to which the liability herein is generated, states as follows:

A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer...

The term "use" or "using" is further defined by the statute to include as its primary meaning the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. See 35 ILCS 105/2.

As a exception to the imposition of such tax, the Act goes on to provide a multiplicity of specific exemptions, one of which is entitled "Multistate Exemption". 35 ILCS 105/3-55. That section reads:

To prevent actual or likely multistate taxation, the tax imposed

by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

(b) The use, in this State, of tangible personal property by an interstate carrier for hire as rolling stock moving in interstate commerce...

The Act further specifies, under the terms of 35 ICLS 105/3-60:

The rolling stock exemption applies to rolling stock used by an interstate carrier for hire, even just between points in Illinois, if the rolling stock transports, for hire, persons whose journeys or property whose shipments originate or terminate outside Illinois.

The obvious import of these sections is that the "rolling stock" of interstate carriers for hire which is used in interstate commerce is not subject to the application of the Use Tax Act on the purchase of such [vehicles], as the case may be.

From the record at hand, there can be no argument that taxpayer, TAXPAYER, is an interstate carrier for hire, having been certified as such by the Interstate Commerce Commission. It is also clear that the automobiles in question are utilized by the business exclusively in its interstate shipments. They are therefore "moving in interstate commerce" as required by the precise terms of the exemption.

There may exist a reasonable basis for inquiry as to these items because of the fact that as passenger automobiles, they are not what people would ordinarily associate as the "rolling stock" of a trucking company. However, neither law nor regulations makes any distinction as to the character of the rolling stock in order for it to qualify for exemption from tax as long as it is used in the manner specified under the Act. As such, and notwithstanding the fact that these vehicles can be categorized as "luxury" automobiles, they are exempt under the factual circumstances of this case. Accordingly, it is recommended that the liabilities herein imposed be cancelled in their entirety.

Richard L. Ryan
Administrative Law Judge